

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

VALERIE KINMAN,

Plaintiff,

v.

THE KROGER CO.,

Defendant.

Case No. 1:21-cv-01154

THE KROGER CO.’S MOTION FOR SUMMARY JUDGMENT

Defendant, The Kroger Co. (“Kroger”) through its undersigned counsel, pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1 of the Local General Rules of the United States District Court for the Northern District of Illinois, respectfully moves this Court to enter summary judgment in its favor against Plaintiff, Valerie Kinman (“Kinman”). In support of its Motion, and as set forth in greater detail in the Memorandum in Support filed contemporaneously herewith, Kroger states as follows:

1. Valerie Kinman filed a putative class action for alleged violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (the “IFCA”) and unjust enrichment. (Sec. Am. Compl., ECF No. 43, ¶¶ 33, 74.) The gravamen of Plaintiff’s IFCA claim is that the front package of Kroger’s “Smoked Gouda” cheese product (the “product”) allegedly false, deceptive and misleading because the cheese’s smoky flavor allegedly is derived solely from added liquid smoke flavoring. (*Id.* at ¶¶ 71-73.) Plaintiff contends that she saw the front package statements “Smoked Gouda” with “distinctive, smoky flavor,” and had no reason to know the cheese was not subject to any smoking, and that she would not have purchased the product – or would have paid less for it – had she known the representations were false and misleading. (*Id.* at ¶¶ 77, 79.) Her

unjust enrichment claim is predicated on the same allegations. (*Id.* at ¶ 95.)

2. Plaintiff's allegations about the have proven to be indisputably false. This Court should enter judgment in favor of Kroger, and against Kinman, because there is no genuine issue of material fact that, in fact, the "Smoked Gouda" product is produced using two distinct wood-smoking processes.

3. Plaintiff has no contrary evidence. Under these undisputed facts, Kroger is entitled to summary judgment because the front package is not false, deceptive or misleading in any respect, and there is no violation of the ICFA. As a result, neither Plaintiff nor any other consumer can sustain a consumer fraud claim against Kroger because the cheese product is exactly what it says it is on its front package.

4. Contemporaneous with the filing of this Motion, Verizon filed a Memorandum In Support Of Its Motion For Summary Judgment, and a Rule 56.1 Statement Of Undisputed Material Facts.

WHEREFORE, The Kroger Co. respectfully requests this Court to grant its motion for summary judgment, enter judgment in its favor and against Plaintiff Valerie Kinman, and award any other relief this Court deems just or proper.

Dated: September 15, 2023

Respectfully submitted,

By: /s/ Tonya G. Newman

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CERTIFICATE OF SERVICE

I, Tonya Newman, an attorney, hereby certify that on September 15, 2023, I caused the foregoing to be served on all counsel of record through the Court's ECF system.

By: /s/ Tonya G. Newman
Tonya G. Newman